

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JOEL M. ROSE and U.S. POSTAL SERVICE,
POST OFFICE, Jacksonville, FL

*Docket No. 98-1021; Submitted on the Record;
Issued December 16, 1999*

DECISION and ORDER

Before GEORGE E. RIVERS, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether appellant has established that he sustained an emotional condition in the performance of duty.

On May 17, 1997 appellant, then a 46-year-old letter carrier, filed a notice of traumatic injury and claim for continuation of pay/compensation (Form CA-1) claiming that on that date he suffered a panic or stress attack due to harassment, threats, confrontations and letter of warnings from his supervisor, Angel Martinez.

In an undated statement, supervisor Lonnie Gonzalez indicated that he told appellant on May 8, 1997 that he was going to receive a letter of warning for leaving work on May 6, 1997 and not telling anyone. Appellant stated that he wanted to wait until his shop steward was there. The letter of warning was issued on May 17, 1997. Mr. Gonzalez indicated that, at that point, appellant went home sick claiming he was suffering from stress due to harassment. Appellant called on May 19, 1997 saying that he was under a doctor's care because of what happened on May 17, 1997. When questioned as to what was done to harass him, appellant stated that he went outside to calm down after the letter of warning was issued and Mr. Martinez, the acting supervisor at that time, came out and asked him "what he was doing, was his mail up" and that was too much for appellant to handle, so he left. A copy of the May 7, 1997 official disciplinary letter of warning describing the events of May 6, 1997 was attached. An undated letter from the employing establishment indicated that appellant was placed on restricted sick leave.

A statement from Mr. Martinez indicated that appellant appeared fine until Mr. Gonzalez issued the letter of warning, after which, appellant got upset and stated that he was leaving. Appellant turned in a "3971" and left the building. Mr. Martinez stated that he instructed appellant to "bring in documentation stating that whatever illness you have prevents you from performing your duties as a carrier."

A May 22, 1997 medical excuse slip from the Medical Center Clinic, P.A. indicated that appellant was under a physician's care from May 17 through May 22, 1997 for "CAD-CP."

On June 9, 1997 the Office of Workers' Compensation Programs advised appellant that he had not clearly stated the specific work factors he felt caused or contributed to the claimed panic attack. In addition, the medical evidence was insufficient to show a medical relationship between the claimed harassment and the condition diagnosed on the medical excuse slip. The Office advised appellant of the evidence needed to establish his claim.

On July 8, 1997 the Office denied appellant's claim on the grounds that fact of injury had not been established. The Office noted that the evidence failed to establish that appellant sustained an injury due to any compensable employment factor.

Appellant requested reconsideration. In an August 15, 1997 statement, appellant alleged various harassing conduct that Mr. Martinez had demonstrated in the months prior to the May 17, 1997 incident. Appellant also related the events of May 6, 1997. He stated that Mr. Martinez stared and watched him all morning and, at 9:30 a.m., he demanded to know what time he was leaving the office to go out on the route. When appellant replied that he did not have all of his mail and estimated that he would leave the office at about 11:00 a.m., Mr. Martinez started yelling at him, saying that he wanted him out no later than 10:00 a.m. Mr. Martinez allegedly told David Soule that appellant was to be out by 10:00 a.m. and back before 3:00 p.m. Appellant stated that Mr. Martinez continued to stand with his arms folded and glaring at him while he cased his mail. He stated that he was feeling sick to his stomach, his nerves had started to shake and that he felt Mr. Martinez was setting him up for another round of harassment techniques. Appellant indicated that he went home sick and that Mr. Gonzalez had stated that it was okay for him to leave.

On May 7, 1997 appellant indicated that Mr. Gonzalez handed him a letter of warning for being absent without leave (AWOL) on May 6, 1997, which Mr. Martinez initiated. Appellant asked Mr. Gonzalez to hold the letter until he had union representation present. He alleged that Mr. Gonzalez said the letter would be withdrawn by him since he knew the truth.

On May 17, 1997 appellant stated that after Mr. Martinez glared and watched him all morning, he was called into the office by Mr. Gonzalez with Bob Laycock, where he was given the letter of warning for May 6, 1997. Appellant indicated that Mr. Gonzalez had stated that he would try to withdraw the letter of warning. He stated that he had to use his annual leave to get away from Mr. Martinez as he was continually burdened by his threats and violent behavior. Appellant indicated that he was not feeling well and told Mr. Gonzalez that he needed to go outside to cool off for a minute as his nerves and stomach were upset. Appellant described his physical symptoms and after he finished "pulling down" his route, he informed Mr. Laycock, Mr. Gonzalez and Mr. Martinez that he was going to the doctor because he started having chest pain and he could not put up with the harassment anymore. Appellant stated that as he was walking out the door, Mr. Martinez yelled at him requesting a doctor's note.

Several copies of grievances and an Equal Employment Opportunity (EEO) complaint filed against Mr. Martinez were submitted along with witness statements concerning other events/situations appellant had with Mr. Martinez and generalized situations concerning

Mr. Martinez's conduct and copies of October 10, 1996 letters of warning issued by the employing establishment. The letter of warning for being AWOL of May 6, 1997 was dismissed.

Appellant also submitted medical documentation concerning the events of May 17, 1997.

An August 4, 1997 medical report from Dr. John C. Fetzer, a Board-certified psychiatrist, indicated that appellant was seen on May 21, 1997 and he described an incident which occurred on May 17, 1997 which involved his supervisor, Mr. Martinez. Dr. Fetzer stated that during this incident, appellant experienced an acute panic attack and had subsequent attacks since that time in the work area. The panic attack on May 17, 1997 was precipitated by his altercation with Mr. Martinez. Appellant was subsequently hospitalized overnight for cardiovascular evaluation which was negative. Appellant was followed for major depression and post-traumatic stress disorder, stemming from incidents and stress within his work environment. Dr. Fetzer stated that appellant required frequent absences from work in order to avoid confrontations with his immediate supervisor, Mr. Martinez, and to avoid further anxiety and panic responses.

In a letter dated October 3, 1997, the employing establishment controverted the claim and submitted documentation. A September 28, 1997 statement from station manager, Ed Walker, outlined appellant's job performances and listed the employing establishment responses. An undated statement from Mr. Martinez indicated that all the letters of warning given to appellant were for just cause and that he did not hold any animosity towards any employee. Other documentation received concerned events unrelated to the circumstances leading up to the May 17, 1997 incident, appellant's relationship with Mr. Martinez, or were copies of evidence already in the record.

In an October 19, 1997 statement, appellant responded to the evidence submitted by the employing establishment.

On November 4, 1997 the Office denied modification of the July 8, 1997 decision. The Office noted that the information appellant submitted regarding past events and problems he experienced with Mr. Martinez did not relate to the current claim for a specific traumatic injury on May 17, 1997 and advised appellant of the option to file an occupational claim. The Office found that, although the evidence demonstrated that the emotional/physical stress attack appellant experienced on May 17, 1997 was related to the events of May 17, 1997, the events of that day did not constitute a compensable work factor as there was no evidence that the employing establishment erred in carrying out its administrative functions or abused its personnel procedures.

The Board finds that appellant has failed to meet his burden of proof in establishing that he sustained an emotional condition in the performance of duty.¹

Under the Federal Employees' Compensation Act,² appellant has the burden of establishing by the weight of the reliable, probative and substantial evidence that the condition for which he claims compensation was caused or adversely affected by factors of his federal employment. To establish that he sustained an emotional condition in the performance of duty, appellant must submit: (1) factual evidence identifying employment factors or incidents alleged to have caused or contributed to his condition; (2) medical evidence establishing that he has an emotional or psychiatric disorder; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to his emotional condition.³

Workers' compensation law does not cover each and every injury or illness that is somehow related to employment.⁴ There are distinctions regarding the type of work situation giving rise to an emotional condition which will be covered under the Act.

For example, disability resulting from an employee's emotional reaction to his or her regular or specially assigned duties or to a requirement imposed by the employing establishment is covered.⁵ However, an employee's emotional reaction to an administrative or personnel matter is generally not covered,⁶ and disabling conditions caused by an employee's fear of termination or frustration from lack of promotion are not compensable. In such cases, the employee's feelings are self-generated in that they are not related to assigned duties.⁷

Nonetheless, if the evidence demonstrates that the employing establishment erred or acted abusively or unreasonably in the administration of a personnel matter, any physical or emotional condition arising in reaction to such error or abuse may be covered.⁸ However, a

¹ The Board notes that the file contains a January 30, 1998 letter from appellant requesting an oral hearing and asserting that he never received the November 4, 1997 decision until January 24, 1998. The record indicates that in each correspondence the Office sent to appellant, his proper home address was used. Appellant's correct home address appeared in the cover letter in the November 4, 1997 decision. It is presumed, in the absence of evidence to the contrary, that a notice mailed to an individual in the ordinary course of business was received by that individual. *A.C. Clyburn*, 47 ECAB 153 (1995). This presumption, commonly referred to as the "mailbox" rule, arises when it appears from the record that the notice was properly addressed and duly mailed. *Mike C. Geffre*, 44 ECAB 942 (1993); *Michelle R. Littlejohn*, 42 ECAB 463 (1991).

² 5 U.S.C. §§ 8101-8193.

³ *Vaile F. Walders*, 46 ECAB 822, 825 (1995).

⁴ *Lillian Cutler*, 28 ECAB 125, 129 (1976).

⁵ *Jose L. Gonzalez-Garced*, 46 ECAB 559, 563 (1995).

⁶ *Sharon J. McIntosh*, 47 ECAB 754 (1996).

⁷ *Barbara E. Hamm*, 45 ECAB 843, 850 (1994).

⁸ *Margreate Lublin*, 44 ECAB 945, 956 (1993).

claimant must support his allegations with probative and reliable evidence; personal perceptions alone are insufficient to establish an employment-related emotional condition.⁹

The initial question is whether appellant has established any compensable employment factors as contributing to his condition.¹⁰ Thus, part of appellant's burden of proof includes the submission of a detailed description of the specific employment factors or incidents which appellant believes caused or adversely affected the condition for which he claims compensation.¹¹ If appellant's allegations are not supported by probative and reliable evidence, it is unnecessary to address the medical evidence.¹²

In this case, the Board finds that appellant has not established a compensable work factor that is substantiated by the record and has failed to establish that the employing establishment either erred or acted abusively or unreasonably in the administration of personnel matters.

The Board notes that appellant filed a CA-1 form for a specific traumatic event on May 17, 1997 when he suffered a panic/stress attack on that date. Although appellant has alleged that his supervisor, Mr. Martinez, has continually harassed, confronted and threatened him, the information appellant provided regarding past events and problems with Mr. Martinez does not relate to this claim, which refers to the injury of May 17, 1997. Appellant may submit such evidence and argument to the Office and file a Form CA-2a for an occupational condition.

Appellant alleged that on May 17, 1997 Mr. Martinez, glared at and watched him excessively while he worked. Appellant further alleged that Mr. Martinez smiled at him on the back docks while he was cooling off after receiving the letter of warning. Appellant also asserts that Mr. Martinez advised him to get medical documentation when he left on May 17, 1997. However, appellant has not provided sufficient evidence that Mr. Martinez's behavior was either inappropriate or harassing.

Appellant also asserts that Mr. Gonzalez should never have issued the letter of warning from Mr. Martinez regarding the events of May 6, 1997. The letter of warning was issued for not maintaining a regular work schedule and for being AWOL. Appellant contended that both supervisors Gonzalez and Martinez and his union representative, Mr. Laycock, knew he was going home sick after the events which transpired on May 6, 1997 between Mr. Martinez and himself. The record reflects that appellant's subsequent grievance was resolved in that the letter of warning was expunged from his record and the AWOL status was changed to reflect that sick leave was taken on May 6, 1997. The Board finds that neither the grievance nor Mr. Gonzalez' handing out the letter of warning from Mr. Martinez establishes error or abuse on the part of the

⁹ *Ruthie M. Evans*, 41 ECAB 416, 425 (1990).

¹⁰ *Wanda G. Bailey*, 45 ECAB 835, 838 (1994).

¹¹ *Jimmy Gilbreath*, 44 ECAB 555, 558 (1993).

¹² *Margaret S. Krzycki*, 43 ECAB 496, 502 (1992).

employing establishment in assigning work or administering personnel actions.¹³ Furthermore, although appellant indicated that he filed an EEO complaint against Mr. Martinez, there is nothing in the record to indicate that a final decision has been reached.

As appellant has provided insufficient evidence to support his allegation that the employing establishment erred or acted abusively in the administration of personnel matters, the Board finds that appellant has not established any compensable work factors under the Act.¹⁴

Inasmuch as appellant has failed to meet his burden of proof in providing factual evidence supporting his allegations of error and abuse on the part of the employing establishment, the Board finds that the Office properly denied his claim.¹⁵

The November 4 and July 8, 1997 decisions of the Office of Workers' Compensation Programs are affirmed.

Dated, Washington, D.C.
December 16, 1999

George E. Rivers
Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member

¹³ See *Mary L. Brooks*, 46 ECAB 266, 274 (1994) (finding that subsequent modification of personnel actions does not, in and of itself, establish error or abuse on the part of the employing establishment).

¹⁴ See *Dinna M. Ramirez*, 48 ECAB ____ (Docket No. 94-2062, issued January 17, 1997) (finding that the Board need not consider medical evidence because appellant failed to establish that the employing establishment acted abusively in denying her request for official time).

¹⁵ See *Raul Campbell*, 45 ECAB 869, 877 (1994) (finding that appellant failed to substantiate compensable factors of employment or allegations of error or abuse on the part of the employing establishment).